

JUSTICE SYSTEMS SUBCOMMITTEE TESTIMONY 2008
February 6, 2008

**GOOD MORNING. I'M TOM BECKER, STATE
PUBLIC DEFENDER. I'LL BE DISCUSSING OUR
APPROPRIATIONS REQUESTS TO FUND IOWA'S
INDIGENT DEFENSE PROGRAMS FOR FISCAL YEAR
2009.**

**THE SIXTH AMENDMENT TO THE UNITED
STATES CONSTITUTION AND ITS COUNTERPART IN
THE IOWA CONSTITUTION MANDATE EFFECTIVE
ASSISTANCE OF COUNSEL TO THOSE ACCUSED OF
CRIME AND INVOLVED IN THE JUVENILE JUSTICE
SYSTEM REGARDLESS OF WHETHER THEY CAN
AFFORD TO HIRE AN ATTORNEY. THERE ARE TWO
PRINCIPAL PARTS TO MY DUTIES AS COORDINATOR
FOR IOWA'S INDIGENT DEFENSE SERVICES.**

I SUPERVISE THE STATE PUBLIC DEFENDER SYSTEM, WITH FIELD OFFICES AT VARIOUS LOCATIONS IN THE STATE AND SERVING 89 OF IOWA'S 99 COUNTIES. FORTY-THREE OF THOSE COUNTIES HAVE FULL SERVICE FROM A PUBLIC DEFENDER OFFICE, THAT IS, COVERAGE FOR AT LEAST ALL FELONIES AND INDICTABLE MISDEMEANORS. PUBLIC DEFENDER OFFICES COVER AN ADDITIONAL 46 COUNTIES FOR MAJOR CASES, EITHER CLASS A FELONIES ALONE OR BOTH CLASS A AND B FELONIES. SEVERAL OF THESE COUNTIES ALSO HAVE FULL SERVICE JUVENILE COVERAGE FROM A PUBLIC DEFENDER OFFICE, EITHER REPRESENTING CHILDREN IN DELINQUENCY CASES, CHILD IN NEED OF ASSISTANCE CASES, AND TERMINATION OF PARENTAL RIGHTS CASES, OR PARENTS IN CHILD IN NEED OF ASSISTANCE AND TERMINATION CASES. I

ALSO SUPERVISE AN APPELLATE OFFICE WITH STATEWIDE COVERAGE FOR APPEALS AND A CIVIL COMMITMENT UNIT WITH STATEWIDE COVERAGE FOR COMMITMENT PROCEEDINGS UNDER CHAPTER 229A OF THE IOWA CODE.

FOR THE COUNTIES AND CASES NOT SERVED BY A PUBLIC DEFENDER OFFICE, AND FOR OTHER CASES WHERE THE PUBLIC DEFENDER CANNOT REPRESENT SOMEONE BECAUSE OF A CONFLICT OF INTEREST OR WORKLOAD CONSIDERATIONS, THE COURT APPOINTS ANOTHER ATTORNEY. IN SOME CASES, THE COURT WILL APPOINT A NONPROFIT ORGANIZATION THAT HAS CONTRACTED WITH MY OFFICE. IN THE VAST MAJORITY OF CASES, THE COURT APPOINTS A LAWYER FROM THE PRIVATE BAR – THE SHORT-HAND TERM IS “ASSIGNED COUNSEL” – WHO THEN SUBMITS A CLAIM FOR HIS

OR HER SERVICES BASED ON ESTABLISHED FEE RATES AND PER CASE FEE LIMITS SET BY MY OFFICE. THIS IS THE SECOND MAJOR PART OF MY JOB, AS I ADMINISTER THE INDIGENT DEFENSE FUND FROM WHICH WE PAY THE FEE CLAIMS. MY BUDGET IS BROKEN DOWN BY THESE FUNCTIONS, WITH MONEY FOR PUBLIC DEFENDER OPERATIONS AND MONEY IN THE INDIGENT DEFENSE FUND FOR PAYMENT OF CLAIMS.

THE HOURLY FEE RATES FOR ASSIGNED COUNSEL ARE SET BY IOWA CODE SECTION 815.7. AS A RESULT OF FEE RATE INCREASES IN EACH OF THE LAST TWO YEARS, THEY ARE NOW \$70 PER HOUR FOR CLASS A FELONIES, \$65 PER HOUR FOR CLASS B FELONIES, AND \$60 PER HOUR FOR ALL OTHER CASES, INCLUDING ALL JUVENILE COURT CASES AND POST-CONVICTION RELIEF ACTIONS.

MY OFFICE SETS PER-CASE FEE LIMITS BY ADMINISTRATIVE RULE, WHICH IS REQUIRED BY IOWA CODE SECTION 13B.4. WE HAVE RECENTLY PUBLISHED NOTICE OF NEW ADMINISTRATIVE RULES THAT, WHEN EFFECTIVE, WILL CHANGE THE FEE LIMITS WHERE APPROPRIATE TO ACCOUNT FOR THE HIGHER FEE RATES.

FISCAL YEARS 1997 – 2007 HAVE SEEN SIGNIFICANT INCREASES IN THE NUMBER OF INDIGENT DEFENSE CASES HANDLED BY PUBLIC DEFENDER OFFICES AND THE NUMBER OF CLAIMS AGAINST THE INDIGENT DEFENSE FUND BY ASSIGNED COUNSEL FROM THE PRIVATE BAR. THOSE ARE SUMMARIZED IN THE MATERIALS FROM LEGISLATIVE SERVICES. THERE HAS BEEN A LEVELING OUT OF THE CASES HANDLED BY PUBLIC

DEFENDERS IN FY07, WHICH IS NOT SURPRISING AS THE STATE PUBLIC DEFENDER TRIAL DIVISION HAS NOT HAD AN INCREASE IN ATTORNEY RESOURCES SINCE BEFORE I BECAME STATE PUBLIC DEFENDER IN 1999 AND, IN RECENT YEARS, PUBLIC DEFENDER OFFICES HAVE FOCUSED ON INCREASING THEIR COVERAGE IN ALLEGED CLASS A AND B FELONY CASES, WHICH MEANS MORE OF THE LESS SERIOUS (AND LESS EXPENSIVE) CASES GO TO ASSIGNED COUNSEL FROM THE PRIVATE BAR. ACCORDINGLY, CLAIMS TRAFFIC HAS CONTINUED TO INCREASE SIGNIFICANTLY EVERY YEAR. IN FY07, TOTAL CLAIMS AGAINST THE INDIGENT DEFENSE FUND – INCLUDING ATTORNEY FEE CLAIMS AND CLAIMS FROM OTHER PROVIDERS, SUCH AS INTERPRETERS AND DEPOSITION REPORTERS -- BROKE THE 80,000 BARRIER FOR THE FIRST TIME.

FISCAL YEAR 2008 PROMISES TO BE STILL ANOTHER YEAR OF HIGH CASELOADS AND CLAIMS TRAFFIC. HALFWAY THROUGH, PUBLIC DEFENDER CASES ARE RUNNING RIGHT AT OUR PERFORMANCE EXPECTATION OF 71,000 CASES. ON THE CLAIMS SIDE, WE'RE PROJECTING A TOTAL CLAIMS TO EXCEED 84,000, A 5% INCREASE IN THE NUMBER OF TOTAL CLAIMS AGAINST THE INDIGENT DEFENSE FUND FROM FY07. SINCE FY03, THERE HAS BEEN A 33% INCREASE IN CLAIMS TRAFFIC THROUGH OUR OFFICE, WITH NO INCREASE IN THE NUMBER OF FULL TIME EQUIVALENT POSITIONS TO HANDLE THE CLAIMS TRAFFIC.

OUR FY09 APPROPRIATION REQUEST IS A STATUS QUO REQUEST, WITH ONE EXCEPTION. WE REQUEST AUTHORIZATION FOR ONE ADDITIONAL FULL TIME EQUIVALENT POSITION, WHICH IS A

DATA INPUT POSITION FOR OUR CLAIMS REVIEW PROCESS. BECAUSE OF THE CONTINUING INCREASES IN CLAIMS TRAFFIC, WE NEED THE ADDITIONAL PERSON TO INPUT THE CLAIMS INFORMATION AS IT COMES IN. THIS WILL ALLOW US TO BETTER MAINTAIN OUR PERFORMANCE MEASURES ON CLAIMS PROCESSING. A KEY ELEMENT TO MAINTAINING SUCCESSFUL INDIGENT DEFENSE PROGRAMS IS PROVIDING INCENTIVES TO PRIVATE ATTORNEYS TO REMAIN ON THE ASSIGNED COUNSEL CONTRACT LISTS. ONE IMPORTANT INCENTIVE IS A REASONABLE EXPECTATION WHEN THEIR CLAIMS WILL BE PAID. TIMELY DATA INPUT IS NEEDED TO ACCOMPLISH THAT, HENCE OUR REQUEST FOR THE ADDITIONAL FTE. WE ARE NOT REQUESTING ADDITIONAL FUNDING FOR THIS POSITION, AS WE'VE BEEN PAYING A CONTRACT TEMPORARY WORKER TO DO THIS WORK.

OUR FISCAL YEAR 2009 APPROPRIATION REQUESTS REFLECT THE CONSTITUTIONAL MANDATE FOR INDIGENT DEFENSE, PROJECTED GROWTH, AND THE IMPACT OF RECENT FEE RATE INCREASES AND THE IMPORTANCE OF INDIGENT DEFENSE TO PROVIDING FOR VULNERABLE IOWANS. OUR REQUESTS ALSO REFLECT THE IMPORTANCE OF MAINTAINING BOTH FULLY STAFFED PUBLIC DEFENDER OFFICES AND A STRONG PARTNERSHIP WITH THE PRIVATE BAR, WHICH NECESSARILY INCLUDES AN EFFICIENT CLAIMS REVIEW AND APPROVAL PROCESS.

AS I NEAR THE END OF MY PREPARED COMMENTS, I'D LIKE REITERATE MY OVERARCHING STRATEGY IN MANAGING IOWA'S INDIGENT DEFENSE PROGRAMS, WHICH I'VE EMPHASIZED IN

MY EFFICIENCY REPORTS TO THE GENERAL ASSEMBLY, INCLUDING MY MOST RECENT REPORT SUBMITTED LAST DECEMBER, AND PRIOR TESTIMONY BEFORE THIS SUBCOMMITTEE. AS LONG AS IOWA MAINTAINS A ROBUST POSTURE IN INVESTIGATING AND PROSECUTING CRIME – WHICH IT SHOULD – IT MUST MAINTAIN ROBUST INDIGENT DEFENSE PROGRAMS. IF THERE’S GROWTH IN THE CASES FILED BY IOWA’S 99 COUNTY ATTORNEYS, WHICH THERE ALWAYS IS, THERE’S GOING TO BE GROWTH IN THE NEEDS OF OUR INDIGENT DEFENSE PROGRAMS. ACCORDINGLY, I’VE BEEN FOCUSING ON THE LONG-TERM MANAGEMENT AND CONTAINMENT OF INDIGENT DEFENSE COSTS. THAT MEANS KEEPING PUBLIC DEFENDER OFFICES OPERATING WITH FULL STAFFS AND THE RESOURCES THEY NEED TO CONTINUE THE CASE PRODUCTION THEY’VE ACHIEVED OVER THE PAST

SEVERAL YEARS, AND MAINTAINING A STRONG PARTNERSHIP WITH THE PRIVATE BAR SO THAT THERE WILL ALWAYS BE QUALIFIED ATTORNEYS AVAILABLE TO TAKE APPOINTMENTS IN CASES NOT HANDLED BY PUBLIC DEFENDERS.

ON JANUARY 1, 2009, IOWA'S STATE PUBLIC DEFENDER WILL CELEBRATE ITS 20TH ANNIVERSARY. DURING THAT TIME, THERE HAVE BEEN BOTH REPUBLICANS AND DEMOCRATS AT TERRACE HILL, AND DEMOCRATS AND REPUBLICANS IN CONTROL OF ONE OR BOTH HOUSES OF THE GENERAL ASSEMBLY. REGARDLESS OF WHICH PARTY HAS HELD POLITICAL POWER, IN HARD ECONOMIC TIMES AS WELL AS PROSPEROUS TIMES, IOWA'S INDIGENT DEFENSE PROGRAMS HAVE REMAINED FUNDED, CONTINUED TO MEET THE NEEDS OF IOWANS, AND CONTINUED TO PLAY AN ESSENTIAL ROLE IN FAIR

AND EFFICIENT CRIMINAL AND JUVENILE JUSTICE SYSTEMS, DESPITE INCREASED PRESSURES ON THOSE SYSTEMS. I'M VERY PROUD OF THAT AND FEEL BLESSED TO LIVE AND WORK IN A PLACE WHERE REPRESENTATION OF THE POOR IS VALUED. I AM A MEMBER OF THE EXECUTIVE COMMITTEE OF THE AMERICAN COUNCIL OF CHIEF DEFENDERS. SADLY, A LOT OF OTHER PLACES CAN'T SAY THAT. THIS SUBCOMMITTEE AND YOUR COLLEAGUES HAVE MY THANKS FOR PLAYING SUCH AN IMPORTANT ROLE IN THAT SUCCESS.

THIS CONCLUDES MY PREPARED REMARKS. I'LL BE HAPPY TO ADDRESS ANY QUESTIONS.